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OGC 78-2496  
19 April 1978

MEMORANDUM FOR THE RECORD

FROM: [REDACTED]

SUBJECT: Meeting with Staff of House Permanent Select Committee on Intelligence on S. 1437 "Criminal Code Reform Act of 1977"

REFERENCE: A. Letter [REDACTED] to MJO'Neil, Staff Counsel, HPSCI, dated 6 April 1978

B. Memo for [REDACTED]  
Subject: S.1437, Omnibus Revision of the Federal Criminal Code, dated 22 March 1978

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1. On 12 April [REDACTED] and the undersigned, accompanied by Ron Gainer, Deputy Assistant Attorney General, Office for Improvements in the Administration of Justice, met with Michael J. O'Neil, Bill Funk and Bernie Raimo, of the HPSCI Staff, to discuss the subject bill. The CIA representatives, noting that numerous provisions in subject bill criminalized activities which Agency personnel were required to engage in, sought some explicit clarification that such provisions would not apply to the official actions of CIA officers. The Agency's first preference was an amendment of the definition of person to exclude government employees acting within the scope of their lawful authority. A second alternative was to include a detailed defense of public authority section in the bill, and a third alternative was to add national security exceptions to each section which impinged upon Agency activities.

2. Mr. Gainer detailed a compromise which had been worked out between Senators Kennedy and McClellan to delete the "bars and defenses" section from the Criminal Code codification with the hope of enacting such a section subsequently. In addition, he noted that the definition of person which CIA favored had appeared in S.1, the original Criminal Code codification attempt, only to be dropped. He agreed that the House was not bound by the Senate compromise or by Senate action but cautioned that the political consequences of undermining the Senate compromise could be serious.

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3. Mr. Funk suggested that the Agency would do well to avoid alienating Senator Kennedy by pushing for a change in S.1437, because the Senator had a great deal riding on the bill, had worked long and hard on it, and felt that the only way it could be passed in this session of Congress was to limit or avoid controversial items involving intelligence authorities or the espionage provisions.

4. Mr. O'Neill took a contrary position, arguing in favor of an Agency approach to Senator Kennedy, to Representative Rodino, Chairman of the House Judiciary Committee, and to Congressman Mann, Chairman of the House Subcommittee, which would have primary jurisdiction over the Criminal Code Revision. Mr. O'Neil suggested that the Agency would have maximum leverage at this point and, even if it did not ultimately prevail, would be better off for having made a straightforward presentation of the problem. He noted that after the Code revision was passed there would be a two-year period before it came into effect. During this two-year period and, of course, during the debate on charter legislation, Agency concerns about S. 1437 could be addressed and a solution to our problem found.

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